

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JUNE C. AIELLO**

**(Case No. 11505)**

A hearing was held after due notice on January 5, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

**Nature of the Proceedings**

This is an application for a variance from the front yard setback requirement.

**Findings of Fact**

The Board found that the Applicant was seeking a variance of 6.5 feet from the forty (40) feet front yard setback requirement for an existing front stoop. This application pertains to certain real property located northwest of Road 283 (Postal Lane) approximately 1,650 feet northeast of Road 275 (Plantation Road) (911 Address: 34391 Postal Lane, Lewes, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-462.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated July 31, 2014.
2. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
3. Robert Ritter was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to the Board to review.
4. The Board found that Mr. Tomasetti stated that Mr. Ritter was the previous owner of the Property from 2005 to 2014.
5. The Board found that Mr. Tomasetti stated that a survey completed in 2005 did not show the front stoop of the house but the survey completed in 2014 showed the front stoop and the encroachment into the front yard setback.
6. The Board found that Mr. Tomasetti stated that the front stoop is approximately seventeen (17) inches high and that the front stoop was built with the existing dwelling over thirty (30) years ago.
7. The Board found that Mr. Tomasetti stated that the Property is unique due its topography and that the lot measures 99 feet wide by 169 feet deep.
8. The Board found that Mr. Tomasetti stated that the stoop will not be detrimental to the public welfare.
9. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicant.
10. The Board found that Mr. Tomasetti stated that the stoop will be in conformity with other homes in the neighborhood that have stoops and that the variance does not alter the character of the neighborhood.
11. The Board found that Mr. Tomasetti stated that the stoop is uncovered.
12. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Ritter testified that the front stoop was there when he purchased the Property and that the stoop was built with the original construction of the home.
14. The Board found that Mr. Tomasetti stated that Mr. Ritter was unaware of the encroachment when he purchased the home because he relied on the survey at that time.

15. The Board found that Mr. Ritter confirmed the statements made by Mr. Tomasetti as being true and correct.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property is unique due to its unique topography as testified to by the Applicant and due to its shallow depth. The circumstances are also unique due to the fact that the stoop was constructed with the original dwelling thirty (30) years ago but the encroachment into the front yard setback area was only recently discovered.
  - b. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The one-story masonry dwelling as shown on the survey dated July 31, 2014, is 40.1 feet from the front property line without steps to the dwelling. The stoop is necessary to provide access to the dwelling and cannot be placed in the front yard without a variance. As such, the variance is necessary to enable reasonable use of the Property. The encroaching stoop is a reasonable structure that provides access to the dwelling and has been in its current location for many years. The variance will allow this structure to remain in that location.
  - c. The exceptional practical difficulty was not created by the Applicant. The testimony from the previous owner indicates that the stoop was constructed with the dwelling and has been in its location for approximately thirty (30) years. The un rebutted testimony further evidences that the stoop was in its current location when the Applicant purchased the Property last year. It is clear that this encroachment was created by a prior owner and not by the Applicant.
  - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The stoop has been in its current location for approximately thirty (30) years and no evidence was presented that the stoop has altered the character of the neighborhood or somehow been detrimental to the neighborhood. Rather, the testimony provided by Mr. Ritter evidences that other homes in the neighborhood have similar stoops. The approval of this variance allows the existing stoop to remain in its location.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance requested will allow the existing stoop to remain and that no additions which require a variance are being sought.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

*Dale Callaway*

Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date March 3, 2015